



W.P.(MD)No.13915 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 28.10.2022

CORAM

THE HONOURABLE Mrs.JUSTICE V.BHAVANI SUBBAROYAN

Writ Petition (MD) No.13915 of 2022

D.Jayakannan

.. Petitioner

Versus

1.The District Collector,
District Collector's Office,
Trichy-1, Trichy District.

2.The Tahsildar,
Taluk Office,
Thuraiyur, Trichy District.

3.The President,
Sikkathambur Panchayat,
Sikkathambur, Thuraiyur Taluk,
Trichy District.

4.The Commissioner,
Thuraiyur Panchayat Union,
Thuraiyur, Trichy District.

5.The Executive Engineer,
Public Works Department (RC Division),
District Court Campus,
Trichy-1, Trichy District.

6.The Junior Engineer,
Public Works Department (RC Division),
Thuraiyur, Trichy District.

.. Respondents



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Prayer :- Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus, directing the respondents 3 to 6 herein not to put up any construction on the mud river bank of Ganapadi River which is situated in between the petitioner's agricultural land and said River at Sikkathambur Village, Thuraiyur Taluk, Trichy District, in the light of petitioner's representation dated 27.05.2022.

For Petitioner : Mr.R.Sundar
For Respondents : Mr.D.Gandhiraj
Special Government Pleader

ORDER

This writ petition has been filed seeking for a Writ of Mandamus directing the respondents 3 to 6 herein not to put up any construction on the mud river bank of Ganapadi River which is situated in between the petitioner's agricultural land and said River at Sikkathambur Village, Thuraiyur Taluk, Trichy District, in the light of petitioner's representation, dated 27.05.2022.

2. Heard the learned counsel on either side.

3. The subject property bearing S.F.Nos.186/1B, 187/1, 187/3, 181/2, 186/1A, 186/3F, 186/3G, 186/3H, 186/4, 313/2 measuring to an extent of 45 acres belonged to the petitioner's family, wherein they are doing agricultural works. There is a Ganabadi river adjacent to the subject property. In between



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the subject property and the said river, a mud river bank is there. It is the averment of the petitioner that during the rainy season, flood water flew into the petitioner's land and destroyed the agricultural activities, but the Public Works Department has not taken any steps to strengthen the said river bank. In this regard, the petitioner made a representation before the respondents, but they did not turn. Hence, the petitioner has taken steps to strengthen the said river at his own cost. While that being so, the third respondent has decided to dig a Well on the said mud river bank and to that effect, every arrangement has been made. Hence, the petitioner is before this Court by filing this writ petition with the aforesaid prayer.

4.The learned counsel appearing for the petitioner submitted that if they are allowed to continue to dig a Well, it will cause heavy damage to the cultivation in the subject property. It is the fundamental right of the petitioner to do agriculture work in his land and the respondents cannot prevent the same, which is pure violation of Article 21 as well as 300-A of Constitution of India. Further, it is the duty of the State to protect the agricultural activities, but without taken any steps to strengthen the said mud river bank, on the recommendation of the third respondent, the officials are taken steps to dig a Well on it. It is the settled position of law that on water bodies, no construction would be allowed to be put up. In this regard, the petitioner



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approached the third respondent and other officials concerned, but they are not in a position to heed the petitioner's plea. Hence, he prayed to allow this petition.

5.The Executive Engineer, Water Resources Department, Ariyaru Basin Division, Subramaniapuram, Trichy, has filed a counter affidavit on behalf of the respondents 5 and 6 herein, wherein it is stated that the subject land is not situated adjacent to Kanapadi River. It is situated adjacent to the right bank of the said Kanapadi River. Kanapadi is not a River. It is the feeding channel to fill the water in Sikkathambur Tank, but it is called as Kanapadi River by customary practice. The subject land is having the length from L.S 8.50 Km to 8.80 Km adjacent to the canal bund. The said Kanapadi channel is under the control of Irrigation Section, Uppiliyapuram of Ariyaru Basin Sub Division, Thuraiyur under the administrative control and work jurisdiction of Ariyaru Basin Division, Trichy. It fills up the Sikkathambur Tank during the rainy season. The canal bunds are being kept with regular maintenance. On rare occasion, the damages as alleged by the petitioner could have been experienced by the petitioner. During the months of October, November and December of 2021, such temporary breach in that location was happened in the right bank of the canal and rain water entered into the adjacent fields including that of other owners and the breaches are closed and the bunds are



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strengthened. The canal bund cannot be raised on that particular location, which caused more damages than now experienced by the petitioner. The flood banks were designed to carry the required discharge of water at the maximum. Raising the bund and strengthening the bund throughout the length of the canal (9.00Km) more than the approved design require special approval and separate administrative sanction from the Government and the expectation of the petitioner cannot be fulfilled by the maintaining authorities at their own accord. It is the accepted factor that the petitioner cannot undertake any work in strengthening the bund without the consent or permission by the Water Resources Department as it would cause “Damaging the Government Properties”.

6.As far as digging a Well is concerned, it is not known to the Water Resources Department as either the third respondent or the fourth respondent has not sought for any permission from the Water Resources Department for such execution. The authorities could have obtained proper Administrative Sanction from the Department for the execution of “Digging the open well to fulfil the drinking water requirement for the village people and that too, would be outer side of the canal course and not in the bunds as misconstrued by the petitioner. Based on the case pending before this Court, the Assistant Engineer, Water Resources Department, Uppiliyapuram Section, Thuraiyur,



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directed the respondents to stop the work and a copy of the letter dated 08.07.2022 has been produced before this Court. The open Well as stated to have been dug, is requested to be stopped by the Water Resources Department authorities till finalisation of the writ petition. The prayer of the petitioner can be adjudged to be self interested bearing no public interest.

7.Considering the facts and circumstances of the case and also consider the submissions made on either side, this Court directed the Government to pass orders all among the averments in the counter. The Water Resources Department has not proceeded with the construction of well. If other respondent/local panchayat is going to dig a well, it would only be done after obtaining permission from the Public Works Department and Water Resources Department and without doing so, if they decide to do, it should be for the paramount welfare of the public for their drinking water purpose.

8.Accordingly, this writ petition is disposed of. No costs.

28.10.2022

Index : Yes/No

Internet : Yes/No

Rmk



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V.BHAVANI SUBBAROYAN, J.,

Rmk

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